

MEDICAL ISSUES/REASONABLE ACCOMMODATION IN THE WORKPLACE





DEFINITIONS

- Qualified Disabled Person
- Reasonable Accommodation
- Undue Hardship

Reference:

<http://www.eeoc.gov/>



HANDLING MEDICAL ISSUES IN THE WORKPLACE

- Addressing the problem
- Obtaining medical documentation
- Determining “Reasonable Accommodation”
- Taking disciplinary/performance action
- Handling medical-related situations



ADDRESSING THE PROBLEM

- If the employee does not raise a medical issue, focus on the conduct or performance issue, not the medical aspects.
- It is overall the employee's responsibility to raise a medical issue that is impacting his/her job.

NOTE: Medical information is protected by the Privacy Act and must always be safeguarded and shared only with those that have a need-to-know.

Only get involved in the medical problem of employees if it impacts their conduct or performance and/or they request reasonable



OBTAINING MEDICAL DOCUMENTATION

When to request documentation:

- The employee informs you that he/she cannot perform the duties because of a medical condition.
- The employee informs you that the working conditions are impacting his/her ability to do the work.
- The employee raises a medical condition in response to a disciplinary/performance action.



OBTAINING MEDICAL DOCUMENTATION

Why request documentation?

- ➔ Need to know what the employee is suffering from and what impact it has on the job.
- ➔ Be specific for what you ask (seek guidance from CPAC).
- ➔ Include relevant documents such as job descriptions, working conditions, etc.
- ➔ The employee must comply with your request for medical documentation.



When can an employer require medical examinations?

- **Answer:** Only at three stages of employment: (1) Pre-job offer; (2) Post-job offer; or (3) During employment.
- Must be “job-related and consistent with business necessity” when: (1) An employer has a reasonable belief, based on objective evidence, that an employee’s ability to perform essential job functions will be impaired by a medical condition; (2) An employer has a reasonable belief, based on objective evidence, that an employee will pose a direct threat (to themselves or others) due to a medical condition; (3) An employee asks for a reasonable accommodation and the employee’s disability or need for accommodation is not known or obvious; or (4) Required in positions that affect public safety, such as Police, Fire Fighters, medical positions involving direct patient care.



REFERENCES:

Who is covered?

Employees and Applicants

- ✓ Rehabilitation Act of 1973, as amended 1992
- ✓ Americans with Disabilities Act (ADA) of 1990 and ADA Amendment Act of 2008 (effective 1 January 2009)
- ✓ Executive Order 13164 (July 2000)
- ✓ EEOC Notice No. 915.002 of 17 October 2002 & EEOC Directives Transmittal No. 915.003 of 2 October 2000 (visit: www.eeoc.gov)
- ✓ Department of the Army Procedures for Providing Reasonable Accommodation for Individuals with Disabilities of 17 March 2009
- ✓ Genetic Information Non-discrimination Act (GINA) of 2008 (effective 21 November 2009)



DISABILITY DISCRIMINATION

- Disability discrimination occurs when: (1) an employer or other entity covered by the Americans with Disabilities Act, as amended, or the Rehabilitation Act, as amended, treats a qualified individual with a disability who is an employee or applicant unfavorably because of his/her disability; or (2) an employer fails to provide reasonable accommodation to an employee or job applicant with a disability, unless doing so would cause significant difficulty or expense for the employer ("undue hardship").
- The law also protects people from discrimination based on their relationship with a person with a disability.
- Anyone currently using drugs illegally is not protected by the ADA and may be denied employment or fired on the basis of such use.



DEFINITION OF DISABILITY

- Not everyone with a medical condition is protected by the law. In order to be protected, a person must be qualified for the job and have a disability as defined by the law. A person can show that he/she has a disability in one of three ways:
 - If he/she has a physical/mental condition that substantially limits a major life activity (such as walking, talking, seeing, hearing, learning, or working) or substantially limits the operation of a major bodily function (functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions) (**Note**: These lists are not inclusive.)
 - If he/she has a history of a disability (such as cancer that is in remission).
 - If he/she is “perceived” as being disabled (even if he/she does not have such an impairment).
- **Note**: Under the ADA Amendment Act - Whether an impairment substantially limits a major life activity or bodily function is to be determined by “whether it substantially limits the ability to perform a major life activity or bodily function in comparison to most people in the general population.”



QUALIFIED DISABLED PERSON

One who, with or without reasonable accommodation, can perform the essential duties of their position.

Disability Analysis must be conducted. Is the individual a qualified applicant or employee?

No - Accommodation not required by law

Yes - Continue the Reasonable Accommodation Process





REASONABLE ACCOMMODATION

Defined...

- Any change in the work environment or in the way things are customarily done that would enable a qualified individual with a disability to enjoy equal employment opportunities.





Let's take a closer look at Reasonable Accommodation....

Examples:

- job restructuring;
- modified work schedule;
- approving leave
- acquiring or modifying equipment'
- changing exams, training materials or policies;
- providing qualified readers or interpreters;
- reassignment to a vacant position (**last resort**) (This requires agency-wide job search.)

Note: Accommodation does not have to be the accommodation requested by employee as long as the accommodation meets



What is not required...

- Lower performance expectations
- Lower conduct requirements
- Restructure major duties
- Create new jobs
- Spend excessive amounts of money
- Disrupt other employees
- Endanger the employee, co-workers or public
- Grant open-ended schedules
- Accept irregular, unreliable attendance

Note: Agencies were once required to offer an alcoholic employee a “firm choice” between treatment and discipline for alcohol-related misconduct. The EEOC determined that the amendments made to the Rehabilitation Act in 1992 removed this obligation. Under the ADA, someone with alcoholism is an individual with a disability if the alcoholism currently substantially limits a major life activity, was substantially limiting in the past, or is regarded as substantially limiting.



Identifying a Need for “Reasonable Accommodation”

Remember: An individual does not have to use the words, “I am requesting an accommodation.” If a red flag is raised – seek guidance and begin an interactive dialogue.

- ❖ Performance/conduct declines
- ❖ Appearance of employee declines/changes
- ❖ Employee notifies management, EEO, or CPAC
- ❖ Extended absences/illnesses/medical restrictions
- ❖ Submission of a request for reasonable accommodation

**Request medical information only
if need is not obvious. Exercise
caution and seek guidance from
your Personnel Management
Advisor, Legal, and EEO guidance
- never play doctor!**



Commence an Interactive Process



- Ask employee to complete Reasonable Accommodation (RA) Form & authorization to release medical information
- What is the physical or mental impairment?
- Is the condition permanent/long-term?
- What accommodation(s) does the individual believe would enable him/her to do the job?
- Assess the effectiveness of various accommodations.
- Determine what the essential functions of the position are.
- Does the impairment limit a major life activity/bodily function?
- What are the limitations?
- Can the employee perform the essential functions of the work safely without being a threat to themselves or others?
- Ask clarifying questions!



For each of the following situations, determine whether the employee meets the definition of:

- a) A disabled person;
- b) Whether he/she is a qualified disabled person;
- c) What accommodation, if any, should the agency provide?
 - If an accommodation is requested by the employee, is it reasonable or would it prove to be an undue burden to the agency?



1. Tim is a Computer Programmer. He has Multiple Sclerosis (MS). Due to the gradual loss of muscle coordination associated with his MS, he has recently begun to use a wheelchair. The duties of his position are primarily sedentary. His performance ratings over the last three years show no deterioration in his Success Level 2 (Highly Successful) performance.
2. James is involved in the fabrication of plastic components. He began experiencing some breathing difficulties and was diagnosed as suffering from asbestosis. As an accommodation, he proposed the use of an air-feed respirator. The respirator had a range of 25 feet which would preclude his access to certain work areas, he would only be able to work 25 minutes at a time, and he needed the help of co-workers to put on and take off the respirator.



3. Paul has epilepsy and uses medication to control the condition. He is an Electronics Technician. His duties include use of meters that measure electric current, soldering equipment and open circuits for testing computer chips and other electronic components. Several months ago, he had two serious seizures while at work. Both times, he fell from his workbench and was hospitalized. During the second hospitalization, his physician recommended he undergo experimental brain surgery to help control the seizures and Paul agreed. Following a six-week recuperation, Paul's doctor has cleared him to return to work. Paul has been back for a week and has already had another seizure. This time, he knocked the soldering iron off his workbench when he fell and it landed on his arm, producing a serious burn.



4. Gilbert, after perceiving that he had been given an unfair workload, began to scream obscenities and then went on to smash dividers between desks and throw a chair and a printer. Although he did not strike or threaten anyone directly, Gilbert was diagnosed as having “an explosive personality disorder” and stated during a later psychiatric interview that he was “fearful of homicidal ideation with his supervisor.” Gilbert requested a reasonable accommodation which required the agency to display greater sensitivity and awareness of his condition and asked to be placed in an environment where he would not encounter “rejection or criticism.”



5. Steve had some serious problems about coming to work on a regular basis, and he failed to comply with leave regulations. In his defense, Steve provided extensive medical documentation about his “substantive memory impairment.” As an accommodation, Steve suggested that a responsible member of his family handle leave and attendance matters by communicating with agency officials.



6. Hudson was frequently depressed at work and suffered from diabetes and chronic asthma. He was charged with AWOL, creating a disturbance in the workplace, and for repeatedly directing rude and insolent remarks at his supervisor. Hudson claimed that his various medical problems and an unsympathetic and uncommunicative supervisor were the cause of his difficulties. He wanted the charges dropped and to be accommodated by being given training which would qualify him for a position in another career field.

Questions?

